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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,605	09/10/2003	Alexander Heller	003254-8	1919

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EXAMINER

ENGLE, PATRICIA LYNN

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/658,605

Applicant(s)

HELLER ET AL. 017

Examiner

Patricia L Engle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/10/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Carr (US Patent 2,181,869).

Regarding claim 1, Carr discloses a convertible roof (T5) movable into a closed position and lowerable into a lowered position in a rear stowage space (dotted lines in Fig. 20), comprising: a rear roof part (113); a shelf (97) movably supported relative to the rear roof part (113); an adjustment means (130,131) for adjusting the shelf between an operating position (upper location in Fig. 20) with the roof closed and a lowered position (lower location in Fig. 20) in which the shelf is positioned against an inside of the rear roof part (113) positioned in the rear stowage space.

Regarding claim 2, Carr discloses the convertible roof of claim 1, wherein the shelf can be swiveled around a swiveling axis (96) located in an area of a rear edge of the shelf (97).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr.

Regarding claims 3 and 4, Carr does not disclose that the shelf is pivotally connected to the rear roof part area. It would have been obvious to one of ordinary skill to join the shelf and the rear roof part by a pivotal connection. The motivation would have been to place the shelf in a compact position so that it did not break when in the stowage space.

Regarding claim 5, Carr does not disclose in Figs. 20-23 that the shelf has opposing outer side areas which can be swiveled relative to a middle part. However, Carr does disclose a shelf in Figs. 25, 27 and 29 in which side parts swivel relative to the middle part. It would have been obvious to one of ordinary skill in the art at the time of the invention to include swiveling end parts on the shelf of Figs. 20-23 as taught by Figs. 25, 27 and 29. The motivation would have

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been to provide a shelf which can be stored in a space smaller than the space required when the shelf and top are in the up position.

Regarding claim 6, Carr does not disclose that the shelf is pretensioned to an operating position. It would have been obvious to one of ordinary skill in the art at the time of the invention to pretension the shelf into an operating position. The motivation would have been to have a shelf which did not easily move when the top and shelf were in the up/operating position.

Regarding claim 7, Carr discloses that the shelf is in contact with a control lever. Carr does not disclose that the control lever moves the shelf against the rear roof part when the roof is being lowered. Carr does disclose using control levers (131,132) to move two parts in relation to one another. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a control lever to move the shelf in relation to the rear roof part to move the shelf against the rear roof part. The motivation would have been to allow for a compact stowage position of the rear roof part and the shelf.

Regarding claim 8, it would have been obvious to one of ordinary skill in the art at the time of the invention to connect the control lever to a bearing mechanism of the roof. The motivation would have been to move the shelf when the roof is being lowered.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carr in view of Dinter et al. (US Patent 6,419,296).

Carr discloses the convertible roof of claim 1.

Carr does not disclose that an outer side the rear roof part faces upward when in the lowered position and a second roof part located underneath the shelf with an identical camber of the rear roof part.

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Dinter et al. disclose a convertible roof in which the rear roof part is the uppermost roof part when in the lowered position and the other roof parts are positioned in a way such that their camber is that same as the rear roof part.

Dinter et al. and Carr are analogous art because they are from the same field of endeavor, i.e., convertible roofs.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to allow the second roof part to be lowered such that it rested below the rear roof part and in the same orientation as the rear roof part.

The motivation would have been to reduce the storage space required to store the convertible roof.

Therefore, it would have been obvious to combine Dinter et al. with Carr to obtain the invention as specified in claim 11.

Allowable Subject Matter

8. Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art not relied upon discloses other convertibles with rear shelves.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777.

The examiner can normally be reached on Monday - Friday from 8:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patricia L Engle

Examiner

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June 17, 2004